applicability based on the current record the Commission should comply with the statutory requirements of rulemaking. 5). There is insufficient evidence of record to allow the Commission to make any basis and ultimate findings of fact or do anything **including** making a determination to initiate further proceedings. 6). Finally, Ameritech alleges the Commission is somehow failing to take into consideration the new Federal Telecommunications Act of 1996.

(b). **Discussion.** We will address each of these allegations not necessarily in the order set forth above. In the Order initiating this Cause, the Commission established that "[t]he purpose of this investigation, and its resultant hearings, is to allow the Commission to hear and consider evidence pertinent to any and all matters related to local exchange competition within the State of Indiana and the positions of all potentially affected parties." *Order of June 15, 1994* at p. 3. The Commission also found at that time that it has jurisdiction over the subject matter and the parties to this proceeding. Throughout the several Orders issued in this cause, there has been no challenge to the Commission's determination of jurisdiction over any or all parties involved herein nor the subject matter involved, until now. Ameritech now, in its post-hearing filings, challenges the Commission's jurisdiction on several grounds largely related to its alleged lack of notice, and due process concerns. The concerns raised by Ameritech appear to be more preemptory to certain Commission action, but due to the expansive application to any and all Commission action in this Cause we must generally address these allegations. The Commission reaffirmed its previous determination that it has jurisdiction over the subject matter, the parties, and the requests made by the Executive Committee five (5) separate times in its Orders dated November 2, 1994, February 15, 1995, June 15, 1995, August 23, 1995, and June 5, 1996.

Ameritech argues in its post-hearing filing that it was not afforded adequate notice as to what the Commission intended to do following the Executive Committee/investigative phase of these proceedings. Ameritech claims that the Commission cannot issue an Order absent a formal proceeding initiated under I.C. 8-1-2-59 or 8-1-2.6. Ameritech does not dispute that this Commission has the statutory authority to issue an Order as we are doing in this Cause, rather it alleges we did not follow correct procedure. The remaining issue presented by Ameritech then is whether there was a "formal" hearing to allow the parties to be heard. Ameritech now claims, after the close of the record, that the hearing of February 12-16, 1996 was somehow not "formal" enough. The Commission established the February 12, 1996 hearing at the request of the Executive Committee, including the Ameritech representative, six

months prior to the hearing. See Order dated August 23, 1995, at 7. No separate request was made by Ameritech for a "formal" hearing even though our Prehearing Conference Order specifically provided the opportunity for such a request. See Ameritech Brief, at Page 10. Ameritech then concedes in its Brief that the: "Executive Committee, however, made no such specific recommendation." Id. What Ameritech did not address in its Brief is its own failure to request a hearing if it believed such a hearing was so important to its interests. Ameritech does not dispute the fact that this Commission has provided notice and ample opportunities for each party to be heard. If a party chooses not to exercise those opportunities this Commission cannot later be held responsible for such a failure.

Along similar lines, Ameritech next complains that the February 15, 1995 Order in this Cause referred to "the adjudicative phase of this proceeding which will likely follow" but complained that the same Order contained no findings or ordering paragraphs initiating any adjudicative proceeding. We find also this argument by Ameritech to be equally incorrect. As discussed above, Ameritech first recognizes the Commission's Order providing the opportunity to request a formal hearing process. It next states that no such request was made and then complains **after** the hearing is over. Although not necessarily required to do so, the Commission provided Ameritech an opportunity to examine the witnesses called at the February 12, 1996 hearing. A review of the record indicates Ameritech's counsel actively examined several witnesses. The Commission is perplexed how Ameritech can now turn around and complain that it was not afforded adequate due process rights by the Commission.

Ameritech goes on to complain that the Commission did not provide adequate notice of the matters to be considered by the Commission in this investigation. The Commission again finds that argument unpersuasive in that the Commission specifically advised the parties that they would be in control of what issues would be considered in this investigation via the Executive Committee process. Specifically the Commission stated that:

> While the Executive Committee should consider the foregoing areas, it should have the flexibility to consolidate or expand issues as it determines appropriate, subject to the limitations set forth herein *November 2, 1994 Order, at* p. 4.

Further, the Commission reiterated this point in its Order on Reconsideration dated February 15, 1995, that the parties should

not be bound by the issues presented by the Commission in the November 2, 1996 Prehearing Conference Order. It is clear from the caption and Orders in this Cause that the parties were on notice that this was a proceeding into any and all matters relative to local exchange competition. Ameritech's representative on the Executive Committee, David Klingerman, actively participated in the Executive Committee process and should have been well aware of the issues being discussed therein.

Ameritech next attempts to argue in its Brief, as it did at the February 12, 1996 hearing, that it was not given "sufficient" notice that the parties would be "expected" to examine witnesses, submit evidence or otherwise actively participate in the February 12, 1996 hearing. The Commission certainly had no expectations regarding who would and who would not be participating in this matter. The Commission merely gave notice of its intent to pursue this investigation and left it to the parties to determine their own level of involvement. As a further accommodation for the benefit of the parties, the Commission issued a docket entry on February 2, 1996 providing an opportunity for parties to call and examine executive committee member witnesses. Ameritech provides no convincing explanation for its delay in raising these concerns at the beginning of and more fully after the February 12-16, 1996 evidentiary hearing. Ameritech's argument regarding a lack of notice, following its active participation throughout this proceeding, is wholly unpersuasive.

Ameritech next complains that it was not provided an opportunity to prepare its case or prepare cross-examination of other witnesses in this matter. This position is very confusing in light of Ameritech's support of the executive committee process and the several orders and docket entries issued in this Cause. First, and foremost, the Commission indicated the Executive Committee process would be "relatively informal and designed to provide a forum for the gathering of information and determining the respective positions of the several parties." Order of February 15, 1995, page 5. However, as we discussed in a subsequent order, the Executive Committee process was chosen at the parties request in lieu of a more adjudicatory proceeding. (See June 21, 1995 Order). Further, we cautioned any party or potential party that should they choose not to participate "actively or in a timely fashion in this initial phase, it has no guarantees that its issue(s) will be presented for later consideration by the Commission. If a party does not choose to participate, we can only assume that the party either believes its issues and concerns will be presented by another active party or that it does not have any issues to be addressed." June 21, 1995 Order Cause No. 39983, page 6. Therefore, Ameritech by choosing the executive committee

approach relinquished the opportunity to prepare an adjudicatory case by choosing instead the ability and obligation to present this in a different fashion through the Executive Committee process.

Finally on this argument, in the Commission's Prehearing Conference Order in this matter, it was abundantly clear that the Commission intended to take action following the Executive Committee process wherein we stated at page 2 that:

> we also find that, based on our past experience with other very complex proceedings, an Executive Committee, "responsible for the formation of appropriate subcommittees and the conducting of appropriate workshops" (id.) **will greatly add to the development of a record upon which public interest finding can be made.**" (emphasis added)

Ameritech also alleges and complains that the Commission failed to comply with the requirements of a rulemaking under IC 4-22-2 *et seq.* We are aware of nothing which requires this Commission to act by way of a rulemaking in circumstances such as the case at hand. In fact, the Commission has the authority to make the types of determinations it has done herein by Order notwithstanding consideration of the intervening Federal Act and the aggressive time frames contained therein. One of the compelling reasons presented to this Commission and supported by Ameritech (as evidenced in its proposed prehearing conference order) to initiate this proceeding was to allow the Commission to create generic guidelines and avoid an ad hoc adoption on an individual basis. This recommendation was accepted and incorporated by the Commission in its Prehearing Conference Order of November 2, 1994. Now Ameritech attempts to object to the very process which it joined in recommending to us. We find this complete change in position taken by Ameritech after the close of the record self serving at best and disingenuous. Even if we were to accept Ameritech's argument regarding the general principles of notice and an opportunity to comment, the Commission **did** publish notice of several stages of this proceeding including all hearings involved and gave all interested parties an opportunity to participate and comment.

Ameritech also argues that this Commission did not act impartially by sponsoring exhibits and asking leading questions. First, IC 8-1-1-5(b) provides authority to this Commission to request a report such as the Executive Committee Report that was later filed and admitted into the record herein as long as the Commission allows examination on the report. Ameritech was given the opportunity to call witnesses and examine each witness called at the hearing. Further, IC 8-1-1-5(d) and other related statutes

gives this Commission the discretion to question any witnesses called, especially considering that this was a Commission initiated proceeding.

The next argument offered by Ameritech is a claim that there is insufficient evidence to allow this Commission to make any findings of fact. This is clearly not supported by the record in this Cause. As mentioned elsewhere in this Order, there was a substantial amount of information presented in the Report and also at the hearing. In addition, we were asked to take administrative notice of the new Federal Act. Accordingly, we find this argument by Ameritech without merit. Finally, Ameritech claims that this Commission is somehow acting without consideration of the Federal Act. Such an allegation makes no sense. The Federal Act is now the law of the land and this Commission is required to carry out the directives set forth in the Act. This Order, as well as our prior Order of June 5, 1996, is in furtherance of the Federal Act and its mandates. Therefore, Ameritech's final claim is incorrect.

The several arguments presented by Ameritech as to why the Commission cannot proceed generally are self serving and inconsistent with the public interest provisions contained in both Indiana Law as well as under the Federal Act. Finally, we cannot delay in acting because this could be considered an intentional barrier to new competitors entering the market which is prohibited under Section 253 of the Act. Therefore, the Commission finds that the general claims raised by Ameritech in its Brief of March 8, 1996 are unpersuasive. Ameritech actively participated at all stages of this proceeding. It was given every opportunity to be heard in the Executive Committee process, at the hearing and in its post-hearing filings.

3. **Telecommunications Act of 1996**. On February 8, 1996, President Clinton signed momentous telecommunications reform legislation. This enactment, known as the Telecommunications Act of 1996 ("Federal Act " or "Act"), allows local phone companies, long distance carriers, and cable television companies to compete against each other subject to the conditions set forth in the Act. The Federal Act sets forth procedures, standards and aggressive timetables for the timely implementation of the Federal Act by the Federal Communications Commission ("FCC") and State Commissions.

In pertinent part, the new law imposes a general duty on telecommunications carriers (1) to interconnect directly or indirectly with the facilities and equipment of other telecommunications carriers; and (2) not to install network features, functions, or capabilities that do not comply with the guidelines and standards established by the TA 96. The Federal Act

imposes duties on all local exchange carriers with regard to: (1) resale; (2) number portability; (3) dialing parity; (4) access to rights-of-way; and (5) reciprocal compensation. Section 251 of the Federal Act imposes additional obligations on incumbent LECs, including the duties: (1) to negotiate; (2) to provide interconnection; (3) to provide access to network elements on an unbundled basis at any technically feasible point on rates, terms and conditions that are just, reasonable, and nondiscriminatory; (4) to offer for resale at wholesale rates any telecommunications service that the carrier provides at retail to subscribers who are not telecommunications carriers; (5) to provide reasonable public notice of changes; and (6) to provide, on rates, terms and conditions that are just, reasonable and nondiscriminatory, for collocation.

The Federal Act also exempts certain rural telephone companies from the additional obligations imposed on incumbent LECs until a State commission determines otherwise in accordance with the procedures and standards set forth in the Federal Act. Section 251(f)(2) of the Federal Act also provides an opportunity for certain small LECs to petition for and receive from a State commission a suspension and modification of the LEC's duties and obligations imposed by Sections 251 (b) and (c) of the Federal Act to the extent that such action (A) is necessary (i) to avoid a significant adverse economic impact on users of telecommunications services generally; (ii) to avoid imposing a requirement that is unduly economically burdensome; or (iii) to avoid imposing a requirement that is technically infeasible; and (B) is consistent with the public interest, convenience, and necessity.

Under the regulatory framework adopted by the Federal Act, this Commission is directed to review and approve agreements negotiated by the telecommunications providers and to serve as an arbitrator when requested to do so. The Federal Act sets forth the procedures, standards and time-frames for negotiation, arbitration, and approval of agreements. *Section 252.*

The resale pricing standards section of Section 252(d) sets forth the following standards for wholesale prices for telecommunications service. Section 252(d)(3) provides that for purposes of Section 251(c)(4), a State commission shall determine wholesale rates on the basis of retail rates charged to subscribers for the telecommunications service requested, excluding the portion thereof attributable to any marketing, billing, collection, and other costs that will be avoided by the LEC.

Section 252(e) sets forth the grounds for the rejection by a State commission of any interconnection agreement. These

provisions provide that the State commission may only reject (A) an agreement (or any portion thereof) adopted by negotiation if the State commission finds that (i) the agreement (or portion thereof) discriminates against a telecommunications carrier not a party to the agreement; or (ii) the implementation of such agreement or portion is not consistent with the public interest, convenience, and necessity. *Section 251(e)(2)(A)*.

A State commission may only reject an agreement (or any portion thereof) adopted by arbitration if the State commission finds that the agreement does not meet the requirements of Section 251, including the regulation prescribed by the FCC, or the standards set forth in subsection (d) of section 252. *Section 252 (e)(2)(B)*. The Federal Act directs the FCC to complete within 6 months all actions necessary to establish the above referenced regulations.

Section 252(f) provides discretion for a Bell operating company to prepare and file with a State commission a statement of the terms and conditions that such company generally offers within that State to comply with the requirements of resale under Section 251 and the regulations thereunder and the standards applicable under this section.

Under the Federal Act the Commission may impose, on a competitively neutral basis and consistent with Sections 152(b), 254 and 601(c)(1), requirements necessary to preserve and advance universal service, protect the public safety and welfare, ensure the continued quality of telecommunications services, and safeguard the rights of consumers. *Section 253(b)*. Pursuant to Section 261 and 601(c)(1) of the Federal Act this Commission may enforce state regulations provided such regulations are consistent with the Federal Act.

Pursuant to Section 254(f) of the Federal Act, this Commission may adopt regulations not inconsistent with the FCC's rules to preserve and advance universal service. The Federal Act mandates that "[e]very telecommunications carrier that provides intrastate telecommunications services shall contribute, on an equitable and nondiscriminatory basis, in a manner determined by the State to the preservation and advancement of universal service in that State. [This Commission] may adopt regulations to provide for additional definitions and standards to preserve and advance universal service within [Indiana] only to the extent that such regulations adopt additional specific, predictable, and sufficient mechanisms to support such definitions or standards that do not rely on or burden Federal universal service support mechanisms." *Section 254(f)*.

Section 254(h) concerns the provision of telecommunications services to health care providers in rural areas, educational providers and libraries.

Section 254(i) of the Federal Act provides that the FCC and the States should ensure that universal service is available at rates that are just, reasonable, and affordable. Section 254(j) concerns lifeline assistance; and Section 254(k) prohibits subsidies of competitive services. This subsection provides that "the [FCC], with respect to interstate services, and the States, with respect to intrastate services, shall establish any necessary cost allocation rules, accounting safeguards, and guidelines to ensure that services included in the definition of universal service bear no more than a reasonable share of the joint and common costs of facilities used to provide those services." *Section 254(k)*.

Finally, the Federal Act contains safeguards for the protection of customer information. The Federal Act establishes rules to ensure that the Bell operating companies protect the confidentiality of proprietary information they receive and restrict the sharing of such information in aggregate form with any subsidiary or affiliate. The Federal Act imposes a duty on all telecommunications carriers to protect the confidentiality of proprietary information of other common carriers and customers, including resellers. *Section 222*.

This synopsis of some of the relevant portions of the Federal Act demonstrates: the scope of the Federal Act is enormous, the timetable is compressed and this Commission has a vital role in the successful and timely implementation of this new law. It is within this State and Federal regulatory framework that the Commission must now consider the future course of this cause.

**4. Hearing on Executive Committee Report and Federal Act.**

The Executive Committee work culminated in the filing of the Report on January 16, 1996, three weeks prior to the enactment of the Federal Act on February 8, 1996. However, the Executive Committee members were keenly aware of the pending federal action. The Commission's hearing occurred on February 12-16, 1996 ("Hearing"), barely one week after the Act became law. Several parties commented on the Federal Act but voiced concerns relative to the limited time to review and consider the Act and how it effected their work in the Executive Committee process. Acknowledging these concerns the presiding ALJ invited and encouraged all parties to interpret and comment on the impact of the Federal Act in post-hearing briefs at the conclusion of the hearing. Generally, the witnesses called at the Hearing agreed

that the scope of the issues, recommendations and information contained in the Executive Committee Report was good. Mr. Hartman testified that the Report provided the issues and concerns of the parties in a single document.

At the February hearing Mr. Hartman and the majority of the Executive Committee members who testified agreed that the process which produced the Executive Committee Report was an open process wherein all parties had ample opportunity to participate and make their positions, concerns and recommendations known. This belief was shared by several other member witnesses. These witnesses also testified that they were aware that the Executive Committee process was their opportunity to raise their concerns and make recommendation upon which the Commission would take action.

Mr. John E. Koppin, President of the Indiana Telecommunications Association, testified that the possibility of attaining consensus was significantly constrained by the corporate positions of the parties which placed limitations on the participants. *Tr.* II-103. However, in response to questioning from the bench regarding each member's opportunity to present his/her respective positions and recommendations and be heard, Mr. Koppin indicated each did have such an opportunity. In fact, Mr. Koppin testified that he was aware of his ability to file a minority report if he believed his position was not adequately represented in the Final Report.

At the Hearing some parties claimed that their positions set forth in the Report might have changed as a result of the enactment of Federal Act, the passage of time, or the educational process of the Executive Committee. *Tr.* AA-49, BB-46-47, 90-91. The Commission gave each of the parties the opportunity to update its position at the hearing and later in post-hearing filings. Tr. KK-74-75. Additionally, counsel for Ameritech specifically requested the opportunity to make a post-hearing filing to"address the new federal law as well as the many issues related to resale". *Tr. KK-73.* In general, each witness recognized the fact that the Federal Act mandates resale of services offered at retail. Many of these witnesses offered their respective interpretations of the resale provisions contained in Sections 251 and 252 of the Act.

Mr. Hartman further testified that there are parts of the Executive Committee Report that look at "resale" differently. *Tr.* AA-52. Mr. Hartman explained that the term "resale" has different meanings to different parties and to interpret the viewpoints on resale you need to ask the individual party. He further indicated that it was not always clear that when a party was discussing resale whether this was referring to bundled or unbundled resale.

Ameritech's representative and witness at the Hearing, Mr. Klingerman, explained that the Executive Committee "didn't consider the impact on resellers as we went through each and every issue and the implication that each issue that was discussed might have on resellers versus facilities-based providers." *Tr.* CC-92. Mr. Klingerman testified that resale is a method to initiate local exchange competition, one of the methods that was discussed in the Executive Committee and that he recommended a group of related topics should be discussed in conjunction with what he referred to as the "initiation of resale of service." *Tr.* CC-93.

Two significantly different "implementation time lines" are generally provided in the Executive Committee Report. *IURC Ex. 1, ES,* p. 6. The time line prepared by INECA, STC, NITCO, Tri County, GTE, Ameritech, the OUCC and the Residential Consumers, *IURC Ex. 1,* III, E, 1, developed a framework to address all 29 issues; the time line prepared by AT&T, MCI, MFS, S/U, LDDS Worldcom, and CompTel, *IURC Ex. 1,* III, E, 2, contained substantially less detail and focused on the steps necessary to turn up the first customer for service from a competitive provider. *IURC Ex. 1,* p. 6. During the hearing, Mr. Sarah could not explain how he envisioned the new entrants' time line would actually work with regard to what would be resolved when, [*Tr.* HH-60] but Mr. Sarah agreed that under the new entrants' time line, AT&T would have an affirmative obligation to move through both tracks set forth on the new entrants' time line for resale certification. *Tr.* HH-59. These two tracks were: 1) certification, and 2) tariffing and other regulatory issues. (See Report, Sec. III, E2, New Entrant's Timeline). He also acknowledged that in order to obtain certification for local exchange services in Indiana, AT&T should be required to demonstrate that it has the financial, managerial, and technical wherewithal to satisfy its public utility operations. *Tr.* HH-53.

The several witnesses had varying degrees of familiarity with the provisions of the Federal Act, and most witnesses who testified about the new law cautioned that they were still in the analysis process. However, many witnesses testified that they were generally familiar with the resale provisions of the Act. Mr. Sarah testified that AT&T is still analyzing the impact of the new Act and did not have a definite answer on how it impacts the positions taken by AT&T in the Executive Committee Report. *Tr.* HH-44. Mr. Klingerman testified that the Federal Act "probably ends the debate on a lot of issues that would have appeared in the Executive Committee Report." *Tr.* CC-13. Mr. Klingerman explained that "the federal law identifies that Ameritech would offer resale on all of its retail services provided to end-users, it identifies that the resale tariff would be constructed based on wholesale -- quote, wholesale prices, and that those wholesale prices would be

based on the retail price less avoidable cost." *Id.* He explained that Ameritech intends to comply with the law and the FCC's regulations.

The use of price floors, the avoidance of inter-organizational subsidies and the pricing requirements of the Federal Act were also addressed during the course of the Hearing. Mr. Klingerman recommended that pricing floors, computed using the Total Service Long-Run Incremental Cost (TSLRIC) methodology should be used by resellers and facilities-based providers. *Tr.* CC-30-31. Mr. Ream testified that the resale of services that were currently priced below cost would adversely impact the LEC. *Tr.* GG-22, 71-72. Mr. Schoonover testified that "[i]ntuitively, we believe that in many instances, the local rates charged by the local exchange carriers may well be below the incremental level, and while we have not performed specific studies to identify that, we can look at the loop costs of these individual companies and see that without looking at any other costs, that their loop costs are themselves higher than the local service rates charged by some of the companies." *Tr.* FF-60, 71, 88. Various witnesses indicated there is a difference between determining TSLRIC and determining wholesale rates on the basis of retail rates less avoided cost under the Federal Act. *Tr.* II-63. Mr. Payne clarified the Federal Act requirement that wholesale rates should be computed on the basis of the retail rate less avoided cost is the same as net avoidable cost. *Tr.* II-69.

Another area of concern raised by Mr. Klingerman under the Federal Act was the ability of new entrants to offer one-stop shopping, which he defined as offering residential and business customers a full range of telecommunications services which would include local service, intraLATA toll calling, and interLATA toll calling. *Tr.* CC-87-88. He believed that there was a great deal of consumer interest in having the advantage of acquiring all types of telecommunications services from one provider and that this is a strategic initiative that many of the new entrants intend to pursue. *Tr.* CC-88. Mr. Klingerman further explained that were entry by competitors to occur in advance of the FCC promulgation of rules and Ameritech's compliance therewith, Ameritech would be significantly inhibited without a major component interLATA toll of that one-stop shopping capability. *Id.*

The Commission asked numerous witnesses about "calling scopes" and there was a range of responses. At one end was Mr. Klingerman's testimony that because the wholesale tariff is essentially designed to mirror the retail service, that the calling scope available to the retail customer and the calling scope that would be included in the wholesale tariff offering would be the

same. *Tr.* CC-35 At the other end, Mr. Schutz testified that "generally, new entrants should not be required to service the same area or provide the same calling scope as incumbent LEC; however, I guess one of the trade-offs with being something other than a facilities-based provider, in order to trade-off in the resale environment, would be that, in that case, they would be required to cover the same territory, so to speak, and offer the same calling scope as the incumber LEC. If, at a minimum, if a reseller were to want to expand the calling scope to include other territories, they may be free to do that, which would provide another option for the customer, but in that situation, they would need to make whatever arrangements they felt necessary to have the facilities provided to offer additional calling scopes beyond what the incumbent LEC was offering." *Tr.* EE-12-13.

The Commission also asked numerous witnesses about directory listings. Mr. Klingerman testified the coordination with additional providers would increase the cost of producing the directory. *Tr.* CC-47. Mr. Ream and Mr. Schutz agreed. *Tr.* GG-34-35, EE-18. Mr. Sarah testified that AT&T's position was that they "should be afforded the opportunity to have our customers listed in the incumbent's telephone directory" and that AT&T "would certainly pay the cost of whatever that may be." *Tr.* HH-50. MCI's Mr. Carl D. Giesy, agreed that MCI would pay such costs provided they were reasonable. *Tr.* KK-25.

Finally, the impact of competition on rural areas or small LECs was noted throughout the week. For example, Mr. Dwayne R. Glancy, Treasurer and Chief Financial Officer of Smithville Telephone, stated that the risks to customers of small companies outweigh the benefits of resale. *Tr.* JJ-20-21. Mr. Schoonover testified that it is not an unreasonable expectation that the "small company wouldn't even attempt to begin to start the process until a bona fide request is placed on the small LEC and then provide a reasonable period of time once we have an understanding of what that competitor is looking for in order to offer a price." *Tr.* FF-74-75.

5. **Discussion and Findings**. The Federal Telecommunications Act of 1996 directs this Commission to allow competition in the local exchange market. It is no longer a question of whether competition should occur, but when and how. While Congress has issued specific directives in the Act it left State Commissions the responsibility to determine the process to accomplish competition at the local level in a timely but deliberate and considered fashion. In undertaking this duty, this Commission has relied heavily on the Executive Committee process and the Report filed with this Commission on January 16, 1996. We have considered all

of the views of the participating parties in light of the Commission's own policy goals and objectives and the Federal Telecommunications Act of 1996.

In a time of transition such as the case here, utility regulation is not a topic which fits tidily within a formal adjudicatory process. The parties herein recognized this when recommending that the Commission process this matter using the Executive Committee approach. The state legislature has recognized this as well by bestowing upon this Commission the authority to utilize its special expertise and abilities to not only make factual determinations but also provide policy directions and considerations for the industry as a whole under IC 8-1-2.6 *et seq.* This is what is involved in the case at hand. We originally set out to review the entire local telephone exchange process in this State and consider whether it would be appropriate to move toward competition and, if so, how to accomplish that movement in an orderly and deliberate manner. The various parties assured us the executive committee process was the best way to accomplish this. (See Orders in Cause No. 39983, dated June 21, 1995 & August 23, 1995). Now that the Federal Act has been enacted, we must exercise our authority to implement the Federal Act while balancing the interests of the parties and the public interests as consistently as possible with Indiana law.

The Executive Committee Report which compiled the positions, concerns and recommendations of the parties on myriad issues associated with local competition has been an invaluable tool in our decision making process, and will continue to provide direction as the telecommunications industry moves forward to fair and full local exchange competition. The Executive Committee process advanced by the parties and later adopted by the Commission has afforded the parties an opportunity to explore significant matters without the strictures of a more adversarial proceeding. This allowed the parties the ability to present to the Commission a vast amount of information and recommendations quickly, which has proved to be essential in this area in light of the new Act. The Commission and the participants in this Cause have the substantial benefits of advance consideration of many of the complex issues and well reasoned recommendations which will assist the Commission in taking timely action consistent with the responsibilities of the Commission under the new Federal Act and Indiana law. The Commission does recognize the speed with which competitive matters have already evolved and expects this to continue. Because of this we are not afforded the luxury of just sitting back and waiting to see how things ultimately work out. We must be just as proactive as we were in timely initiating this Cause to be able to fulfill our statutory obligations under IC 8-1-2.6 and related statutes to

the telephone industry and the consumers in the State of Indiana.

We can now utilize the valuable information and recommendations from the Report to begin the steps necessary to comply with the Federal Act. Further, the Commission is required under IC 8-1-2.6 *et seq.* to consider the benefits of local exchange competition in a manner consistent with Indiana policies on universal service, competitive fairness, non-discrimination and the efficient and economic provision of telephone service. Toward that end we make the following interim findings and determinations.

**(A). Resale.** The Commission determined after its initial review of the Report that resale of existing services was a good place to begin its enormous task of processing of this Cause. This determination was almost immediately validated upon the enactment of the Federal Act. More specifically, the Federal Act itself dictates that bundled resale shall occur and the types of information to be considered by this Commission when presented with a resale tariff from a local exchange provider. When read in its entirety, the Act may exempt certain rural local exchange providers from certain requirements of Sections 251(b) or 251(c). We, therefore, will limit our focus to those utilities for which there is no possibility of an exemption or for which no exemption has been or can be sought.

This Order deals with "bundled resale" of retail local exchange service and related retail services, as discussed and recommended by the Executive Committee. The Commission finds that it is reasonable to distinguish between the resale of bundled retail services and the resale of unbundled wholesale (or retail) services, network elements, components, functionalities, or facilities. This is consistent with Subsection 251(c)(4) of the new federal Telecommunications Act of 1996, which requires incumbent LECs (ILECs)[1] "to offer for resale at wholesale rates any telecommunications service that the carrier provides at retail to subscribers who are not telecommunications carriers," with certain exceptions, which will be discussed later. This Interim Order is not applicable to unbundled network elements, components, functionalities, or facilities. The Commission will address these issues in future Orders in this Cause or in other proceedings.

Considering the Federal Act, the arguments presented by the parties, and the issues and information presented via the Executive Committee Report and testimony, the Commission now proceeds with

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[1] **NOTE: In this Order, we will generally use the following designations for providers of local telephone services: "ALEC" (Alternative Local Exchange Carrier) and "ILEC" (Incumbent Local Exchange Carrier).**

the difficult task of making its policy determinations regarding resale of bundled telecommunications services in the local market.

(i). Definition of "Resale". Under Sections 251(b) and 251(c)(4) of the Act, all LECs have the duty "not to prohibit, and not to impose unreasonable or discriminatory conditions or limitations on, the resale of their telecommunications services," and ILECs have an affirmative duty "to offer at wholesale rates[2] [to other carriers] any telecommunications service that the [ILEC] provides at retail to subscribers who are not telecommunications carriers"[3] [emphasis added]. However, this Order will focus only on the resale of local exchange service and related retail services.

Given that Ameritech and GTE may not qualify for exemption under the Act, Ameritech and GTE (and any other ILEC that has not applied to this Commission for an exemption, suspension, or modification of certain requirements contained in Section 251 of the Act) are hereby authorized, subject to the filing for certification and the other terms and conditions of this Order, as discussed more fully below, to resell each other's retail local services, restricted to the underlying ILEC provider's service territory.

In this Order, we are authorizing the resale of all of the retail local exchange services of an incumbent LEC by one company (either ILEC or ALEC) in the service territory of such incumbent LEC, subject to the exceptions which will be discussed later.

(ii). Services Subject to Resale. On or before July 24, 1996, Ameritech, GTE, and all rural LECs choosing not to file requests for exemptions, suspensions, or modifications should file with the Commission's Engineering Division wholesale tariffs containing wholesale rates which have the effect of eliminating all resale restrictions in their current local exchange retail tariffs, subject to the exceptions and restrictions specifically permitted by the Commission. The proposed wholesale tariffs should mirror

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[2] Section 252(d)(3) of the Act sets forth the methodology for ILECs to use in calculating these wholesale rates, which must be approved by this Commission, consistent with the relevant portions of the Act.

[3] Section 3, Definition No. 46 [Act], defines the term "telecommunications service" as "the offering of telecommunications for a fee directly to the public, or to such classes of users as to be effectively available directly to the public, regardless of the facilities used." The term "telecommunications," in turn, is defined in Definition No. 43 as "the transmission, between or among points specified by the uses, of information of the user's choosing without change in the form or content of the information as sent and received."

and replicate in total Ameritech's, GTE's, and the affected rural telephone companies' retail rate structures, including all discounts in their retail offerings to end users, less all of the "costs to be avoided" under Section 252(d)(3), to be discussed below. Such wholesale tariffs shall publicly disclose all of the actual rates and charges which an ALEC or ILEC reseller must pay the underlying ILEC for the resale of a given service. No ILEC which is required to file a local wholesale tariff with this Commission may discriminate against any reseller in either the rates, charges, terms, or conditions of its wholesale tariff, except for those restrictions specifically allowed by the Act or by this Commission.

All ILECs who are not otherwise exempted by this Commission under Section 251(f) of the Act shall make available for resale any packages of retail services (*e.g.*, a package of basic local service plus certain vertical services or custom calling features) which they make available to their own retail customers. ILECs need not create special packages of services available only for resale if they do not offer those same packages to their own retail customers.

In general, but subject to the Commission's findings in this Order on "service use restrictions," in any dispute over whether or not an ILEC should be required to make available a particular retail service for resale, and/or whether the ILEC should do so at wholesale rates, the burden of proof shall be on the ILEC to show why a particular service should NOT be made available, and/or why it should NOT be made available at wholesale rates. This is clearly consistent with both Section 251(c)(4) of the Act and, by implication, IC 8-1-2.6-1(4).

(iii). Services **Not** Subject to Resale. All required wholesale tariffs must include all telecommunications services offered to end users at retail, with the following exclusions: individual components of a packaged service offering, joint tenant service, grandfathered services[4], promotional offerings, and carrier access service.

The Act provides little guidance on the appropriate treatment of certain contracts or "agreements" which the ILEC may have with one or more retail customers. In Indiana, these contracts fall

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[4] **GTE's Extended Area Service Distance Tariff is grandfathered; however, the EAS Adder is in addition to the rates for access lines and is applicable for purposes of determining the wholesale local exchange rate. GTE should clearly indicate on its wholesale tariff that the EAS Adder is applicable in a resale setting.**

into two main categories[5]: Individual Customer Arrangements (ICAs)[6] and Customer Specific Offerings (CSOs). These contracts are permitted in certain instances under Indiana state law (IC 8-1-2.6). Because services offered under these CSO, ICA, and ICB contracts are generally not publicly available, the services do not meet a strict reading of the definition of "retail Service" under the Act. Therefore, we find that ILECs are not required to make these contract services available for resale.

**(B). Pricing and Costing Issues.** Several parties have argued in the Executive Committee Report that the ILECs should not be required to make available for resale those retail services which the ILECs claim are priced below cost. Several witnesses said cost should be defined as: Total Service Long Run Incremental Cost ("TSLRIC"). We have insufficient evidence and information on the issue of the calculation of cost so we cannot make a finding at this time. However, we do not believe such an analysis is necessary for several reasons. First, the Act clearly tells us that we must use retail rates less "avoided cost" [See Federal Act, Sec. 252(d)(3)]. Therefore, we have little flexibility under the present circumstances. We do recognize there may be an important issue now raised by certain parties. Nonetheless, regardless of the extent to which an ILEC's local retail service is, in fact, priced below its costs, the ILEC should be no worse off after subtracting its avoided costs (for facilities, services, elements, or functions no longer provided or performed by the ILEC) than it currently is. Secondly, we make this interim determination because we have received little, if any, cost support information for any ILEC's local exchange service and related retail services in recent years, even though we are administratively aware of the tariffs on file at the Commission. In addition, it is clear from the evidence that there is not a uniform "approved" cost study methodology for use in calculating current local retail rates in Indiana. Thus, we currently have no basis for finding that any ILEC local retail services are priced below TSLRIC. Finally, this assertion by certain ILECs that their retail rates are insufficient seems better

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[5] In Consolidated Cause Nos. 39948 and 40130, the Commission recently authorized a two-year trial in which MCI may utilize a third type of contract for certain ["Centrex-like"] and other services which it resells in portions of the Indianapolis local calling area: the so-called "Individual Case Basis" (ICB.) pricing.

[6] The Commission authorized Ameritech to offer certain services under ICAs in the June 30, 1994, "Opportunity Indiana" Order in Cause No. 39705, through December 31, 1997. Ameritech is the only ILEC currently authorized to provide ICAs.

left for consideration as part of company-specific rate filings before this Commission than as part of this Order.

For all of the foregoing reasons, the Commission finds at this time that the affirmative duty to make available for resale a particular local retail service under the Act is not limited by any claims that the retail service in question is priced "below cost," "below TSLRIC," or "below marginal cost;" or is "not recovering its contribution," etc.

(i). Calculation of ILECs' Wholesale Rates for "Bundled" Local Retail Services. As stated earlier, Section 252(d)(3) of the Act sets forth a basic formula ILECs must use in calculating the wholesale rates, which thereafter requires Commission approval. Section 252(d)(3) states that:

> For the purposes of section 251(c)(4), a State commission shall determine wholesale rates on the basis of retail rates charged to subscribers for the telecommunications service requested, excluding the portion thereof attributable to any marketing, billing, collection, and other costs that will be avoided by the [incumbent] local exchange carrier.

This above formula should be followed in all filings of the wholesale tariffs to be filed on July 24, 1996, as provided for elsewhere in this Order.

The issue of a single appropriate methodology for costing calculation was hotly disputed. Several parties claimed Total Service Long Run Incremental Cost ("TSLRIC") should be used for all costs. Others pointed to the Act, which indicates the starting point for arriving at the appropriate wholesale rate is the underlying ILEC retail rate, and that the next step is to subtract those "costs to be avoided" listed in Section 252(d)(3). The Act does not indicate how these "avoided costs" should be determined and we therefore will allow the respective parties the opportunity to present their interpretations (including detailed cost support) in their subsequent filings provided for in this Order. We will review each such filing and reach a determination at the appropriate time.

It is clear, however, from a review of Section 252(d)(3) that the wholesale rate which an ILEC charges for a particular service cannot be higher than the corresponding retail rate for the service

in question.[7] Another practical observation is that, were an ILEC not to pass through decreases in its corresponding retail rates to its wholesale (resale) customer(s) (after the wholesale rates have been reviewed and approved by this Commission), the underlying ILEC's retail rates potentially could be lower than its wholesale rate for the same service. Under this potential scenario, the ILEC would have an unfair price advantage over the competing reseller(s). The bundled reseller, being dependent upon an underlying ILEC's facilities to provide the service, could not lower its own retail rates below the price floor (which we have herein set at the wholesale tariff) in order to match the ILEC's retail rates without cross subsidizing the service in question from another service(s) (e.g., long distance, video, etc.). We, also, herein find that it is necessary to prohibit such cross subsidizations. Therefore, we find and determine that any subsequent reductions in the retail rates of the underlying ILEC should be automatically flowed through to reduce the corresponding bundled wholesale resale rate. We further find that an ILEC must flow through to its wholesale rate, in their entirety, any and all decreases in the retail rates, and that prior to flowing through any increases, an ILEC must provide detailed cost support to this Commission and receive the approval of this Commission. We find that, under no circumstances may the amount of the increase which an ILEC flows through exceed the amount of the increase in the retail corresponding rate.

(ii). Calculation of ALECs' Retail (Resale) Rates for Bundled Services. Based upon our review of the Executive Committee Report, we are not persuaded that an imputation requirement, *per se*, is either necessary or appropriate for resellers of local services. However, we are concerned about the possibility that a local reseller (either an ALEC or an ILEC) could set its retail rates lower than the underlying wholesale rate and cross subsidize its retail (resale) rates with revenues from other services which the reseller may offer (*e.g.*, long distance services). This concern leads us to conclude that there is a need for a price floor for ALEC resellers. We find that the price floor for any ALEC reseller's retail rate shall be the underlying ILEC's wholesale rate for that particular service. This, in part, addresses certain concerns raised regarding potential abuses of one-stop-shopping (*e.g.*, cross subsidies).

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[7] Based upon our review of the Act, there is insufficient support for us to conclude that Congress has authorized this Commission to determine the ILEC wholesale rates based upon "net avoided costs," as advocated by several members of the Executive Committee.

(iii). ILEC Imputation. As the local telephone market in Indiana takes its first steps toward full and fair competition, it is appropriate to consider whether it is necessary or appropriate to set a retail price floor for ILECs - *i.e.*, to set imputation requirements or policies for ILECs. At this time, we believe that the requirements that (1) ILECs reflect, in their wholesale rates, any decreases in the corresponding retail rates and (2) resellers establish a price floor limited to the wholesale rate for the service may eliminate the need for an imputation requirement in a bundled resale environment, at least in the short run. It is likely that, in a possible future environment of facilities-based local competition and unbundled ILEC facilities, we would need to revisit this determination. In addition, it is possible that forthcoming Federal Communications Commission rules or our own experience in implementing bundled resale may also lead us to revisit this conclusion.

**(C). Existing Service Territories and Extended Area Service (EAS).** This initial Interim Order requires that any new entrant who desires to provide resale services shall provide service to a customer including a flat-rate, non-toll option which includes service to the same local exchange and EAS local calling area currently served by the underlying ILEC.

We found in Cause No. 40097[8] that Extended Area Service (EAS) may not be extended through resale beyond the two specified exchanges in any given EAS route. The Commission recognizes that this policy will need to be reviewed as local exchange markets evolve to an increasingly competitive environment, and local exchange providers strive to differentiate their products. We, therefore, intend to revisit this issue, including appropriate compensation arrangements, in a later hearing(s). In this Order, however, we believe certain clarifications are necessary about the applicability of 170 IAC 7-4, et seq., repackaging of EAS by the ILEC, and the existing intercompany settlement agreements in a resale environment.

170 IAC 7-4, et seq., contains the guidelines and procedures that the Commission has approved and end user customers may use to request expansion of their local toll free-calling area. The Final Report of the Executive Committee, at pages 25 - 26[9], reveals the

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[8] In re: The Matter of the Investigation on the Commission's Own Motion Into Any and All Matters Relating to Extended Area Service, As Defined by 170 IAC 7-4, et seq., Cause No. 40097 (June 21, 1996).

[9] Final Report (Volume I), Section III., "Executive Committee Members' Positions on Issues and Related Policy Questions," at 25 - 26.

parties' disparate positions about the applicability of the Commission's current EAS examination and implementation procedures to new entrants. We agree with those who support continuation of our current EAS procedures, and find that doing so would be in the public interest. We will, however, clarify the application of 170 IAC 7-4, et seq. The Commission's EAS examination and implementation procedures must be a coordinated effort between an ALEC reseller and the ILEC. This restriction means that all end users in the affected local exchange area should have an opportunity to participate in the EAS examination and implementation procedures under IAC 7-4, et seq. Since all customers in a local exchange area are affected by the establishment of EAS by the underlying carrier, we find it is important and beneficial for these end users to be part of the EAS implementation process: including petitioning and balloting. In dealing with requests for new EAS, the Commission expects the ALEC resellers and ILECs to act cooperatively and comply with our existing procedures.

As stated earlier, we believe that, as there is a transition to a competitive local exchange market, providers will attempt to differentiate themselves from other providers by offering different, new products or repackaging existing services. In the Order in Cause No. 40097, issued June 21, 1996, the Commission stated:

> Currently, EAS is not a separate service offered to subscribers who are not telecommunications carriers. Instead, it is a bundled service contained within the local exchange package. For this reason, it currently cannot be made available at wholesale to resellers for the provision of service to non-telecommunications carriers. Thus, were a reseller to provide EAS,... the LEC who would be providing the wholesale service to the reseller wold not be compensated. For these reasons,... It is possible that EAS may be unbundled in the future. At such time, it would become possible to offer it at wholesale to resellers. However, any such unbundling would occur as a result of proceedings in a different docket before this Commission. At such time as the unbundling occurs in a different docket, we find that the definition adopted herein should be revisited.

Cause No. 40097, at 13 (June 21, 1996).

The Commission intends to use this Interim Bundled Resale Order as a vehicle for moving forward with the beginning of unbundling of EAS by the ILECs. As an initial step, we find that the ILECs should have the flexibility to develop and offer optional

'EAS calling packages' that would be smaller in scope than the ILECs' existing EAS calling scope. Such unbundling of EAS will allow end user customers to choose the calling packages that best meet their needs. The unbundled EAS packages should be made available to the ILECs' end user customers in the ILECs' retail tariffs and made available to ALEC resellers in the wholesale tariffs. Additionally, local resellers (both ILEC and ALEC) must offer to their own retail (resale) end user customers, as an option, the ability to call toll-free on a monthly flat-rate basis, anywhere in the underlying ILEC's full local exchange and EAS local calling area.

The definition of EAS that was adopted in Cause No. 40097 is as follows:

> **Traditional extended area service (EAS)**
>
> Traditional EAS is defined as telephone service permitting persons in a given exchange to place calls to and/or receive calls from another exchange at monthly flat or measured rates. Traditional EAS is exclusive to and may not be extended through resale or bridging beyond the two specified exchanges in any given EAS route.
> (Cause No. 40097, at 12.)

Although the Commission will permit the ILECs to begin the initial unbundling of EAS in this Order, we will defer the consideration of the issues of extending the use of EAS beyond the two exchanges through resale or bridging to further proceedings. We intend to revisit this issue, including appropriate compensation arrangements, in a future hearing(s). Therefore, the Commission finds the existing EAS definition adopted in Cause No. 40097 should remain unchanged and in effect.

In Cause No. 40097, the Commission found that:

> ... we find that existing arrangements for EAS compensation should be maintained for a reasonable period until they are replaced by new agreements, and that in no case should they be terminated, through adequate notice provisions of such agreements, unless such notice is provided after August 8, 1996 when the new Federal rules are promulgated by the FCC.
> (Cause No. 40097, at 17.)

We see no reason to alter this directive in this Interim Resale Order.

**(D). Service Use Prohibitions and Restrictions.**

(i). ILEC. As stated earlier, Subsection 251(c)(4) of the Act requires Incumbent LECs ("ILEC") "to offer for resale at wholesale rates any telecommunications service that the carrier provides at retail to subscribers who are not telecommunications carriers," with certain exceptions. However, under Subsection 251(c)(4)(B), the IURC may, consistent with applicable regulations prescribed by the FCC and under certain circumstances, "prohibit a reseller that obtains at wholesale rates a telecommunications service that is available at retail only to a category of subscribers from offering such service to a different category of subscribers."

The Final Report of the Executive Committee contains questions and responses about the circumstances under which services should not be available for resale and appropriate restrictions.[10] From a review of these comments and the Federal Act, the Commission finds there is a basis for establishing certain service use restrictions. Accordingly, the following resale prohibitions and restrictions shall apply:

(1) Class (category) of service restrictions: resale should be restricted to the intended class of end user customers. This restriction applies uniformly to the tariffed retail categories of local exchange services of the ILEC, e.g., residential, business, Centrex, Centrex-like, PBX, multi-line business, key trunks, ISDN, etc.

(2) Service use restrictions: resale of flat-rate retail local exchange services or any other local exchange services as a substitute for toll access, toll-like or other usage-sensitive services is prohibited.

(3) Extended Area Service (EAS) restrictions: consistent with the definition of EAS adopted by the Commission in Cause No. 40097 on June 21, 1996, EAS may not be extended through resale or bridging beyond the two specified exchanges in any given EAS route.

In addition, although the Commission intends to examine the issues surrounding universal service in a further proceeding, we note the restrictions pertaining to certain retail customers contained in Subparagraph 254(h)(3) of the Act:

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[10] Final Report (Volume I), Section III., "Executive Committee Members' Positions on Issues and Related Policy Questions," at 92-94.

> Telecommunications services and network capacity provided to a public institutional telecommunications user [elementary or secondary school, a library, or health care provider as those terms are defined in Paragraph 254(h) of the Act] may not be sold, resold, or otherwise transferred by such user in consideration for money or other thing of value.

The Commission finds that the resale of such telecommunications services and network capacity by an elementary or secondary school, a library, or health care provider as defined in the Act should be prohibited.

Because of the potential for the misuse of resold local exchange services, the Commission will allow the ILECs, at their discretion, to place reasonable terms and conditions on the resale of these services in their wholesale tariffs. Such terms and conditions should incorporate the restrictions articulated above and be consistent with this Order and the Act.

(ii). ALEC and ILEC Resellers. Based upon the concerns raised by Ameritech and others relative to potential abuses, ALECs and ILECs that file for a Certificate of Territorial Authority to resell local exchange service will be required to file informational tariffs containing the terms, conditions, rates and charges of their provision of resold services to end user customers. This requirement is also based upon our belief that, as we begin the transition to competitive local exchange markets, such information will be useful to the Commission in judging the benefits of competition, such as introduction of new services and innovative packaging of services. The Commission also finds that the following service restrictions for ALEC and ILEC resellers are in the public interest:

1. These resellers may not use CSOs, ICBs, ICAs or other customer-specific contracts unless the underlying ILEC has been authorized to use such pricing mechanisms. Thus, these resellers may use CSOs, ICBs, ICAs or other customer-specific contracts only to the extent they are utilized by the underlying ILEC and subject to the same filing, review and cost support requirements applicable to the underlying ILEC.

2. These resellers may not discriminate within a customer category when making "promotional offerings." These resellers may, however, file a promotional offering tariff even if the underlying ILEC does not provide such promotional offerings.

**(E). Tariff Issues**

(i). ILEC 'Wholesale' Tariffs. Section 251(b) of the Act contains the obligations of all local exchange carriers and specifies that each local exchange carrier has "[t]he duty not to prohibit, and not to impose unreasonable or discriminatory conditions or limitations, on the resale of its telecommunications services." This duty applies to all local exchange carriers, including those local exchange carriers that qualify as "rural telephone companies" under the Act. Although rural telephone companies are automatically exempt from certain additional obligations of incumbent local exchange carriers articulated in Section 251(c), rural telephone companies must comply with the duties contained in 251(b), including resale, unless they apply for and receive a suspension and/or modification of these duties from this Commission under Section 251(f)(2).

The Commission is aware of two rural telephone companies that have elected to file for suspensions or modifications of certain requirements contained in Sections 251(b) and 251(c) of the Act, namely: Smithville Telephone Company, Inc. - Cause No. 40420 and Northwestern Indiana Telephone Company, Inc. - Cause No. 40443. We are also administratively aware that some other rural local exchange companies have expressed an intent to file for such suspensions and/or modifications, following the issuance of a Final Order in Cause No. 40420, which must be issued on or before September 5, 1996, under the time frame specified for determining suspensions or modifications in the Act. We believe it would be an inefficient use of resources to require these rural telephone companies to file a resale tariff, if they plan to file for a suspension and/or modification of the requirements of the Act with the Commission, in the near future. Therefore, those rural telephone companies that intend to file for a suspension and/or modification under Section 251(f)(2) must file a "letter of intent to file" for a suspension and/or modification with the Commission in lieu of the resale tariff. Such letter should be filed in this instant Cause on or before July 24, 1996, with copies being served on the Commission's Engineering Division Assistant Chief and the Office of the Utility Consumer Counselor, and clearly describe the intentions of the rural telephone company to file a petition for a suspension or modification, including the anticipated petition filing date.[11] Those rural telephone companies that choose not to

[11] In order not to delay the opening of local exchange markets to resale, all petitions for suspension and/or modification by rural telephone companies that do not desire to file resale tariffs must be filed with the Commission on or before September 23, 1996.